

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HUMAN RIGHTS DEFENSE CENTER,
1028 N. Federal Highway
Lake Worth Beach, FL 33460,

Plaintiff,

vs.

Civil Case No. 19-1557

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530,

and

U.S. MARSHALS SERVICE
Office of General Counsel
CG-3 15th Floor
Washington, D.C. 20530,

Defendants.

COMPLAINT
(Freedom of Information Act)

Plaintiff, Human Rights Defense Center (“HRDC”), brings this action against Defendants, the U.S. Department of Justice (“DOJ”) and its component agency the U.S. Marshals Service (“USMS”), to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

As further alleged below, HRDC seeks certain documents from USMS that are directly relevant to HRDC’s mission to advocate on behalf of the rights and interests of incarcerated individuals. Defendants have not claimed that the requested records are subject to any FOIA exceptions or privilege. Instead, despite the clear statutory requirement that an agency respond to a FOIA request within 20 days, and despite HRDC’s multiple inquiries about its request,

which was filed more than five months ago, Defendants have failed to produce any responsive documents. HRDC seeks to compel Defendants to comply with their obligations under FOIA and promptly produce the requested records.

HRDC alleges as follows:

PARTIES

1. Plaintiff Human Rights Defense Center is a 501(c)(3) non-profit corporation incorporated under the laws of the state of Washington, with its principal offices located in Lake Worth Beach, Florida.

2. Defendant U.S. Department of Justice is a Department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1). Defendant U.S. Marshals Service is a component of DOJ.

3. Defendant USMS has possession, custody, and control of the documents that Plaintiff seeks in response to its FOIA requests.

JURISDICTION & VENUE

4. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

STATEMENT OF FACTS

6. Human Rights Defense Center, previously known as Prison Legal News, has dedicated the last 27 years to its mission of supporting the rights of prisoners, furthering basic human rights, and promoting government transparency and accountability through education, prisoner outreach, and advocacy.

7. HRDC's advocacy efforts include publishing and distributing magazines, books, and other written materials that discuss issues, news, and opinions related to the rights and interests of incarcerated individuals.

8. One of HRDC's publications is *Prison Legal News*, a 72-page legal magazine that covers prison-related news and litigation nationwide. Published monthly since 1990, *Prison Legal News* has roughly 9,000 subscribers across all 50 states. Subscribers of *Prison Legal News* include lawyers, journalists, judges, courts, public libraries, and universities, as well as prisoners. *Prison Legal News* also publishes content on its website, which receives up to 100,000 visits each month.

9. Since November 2017, HRDC has also published *Criminal Legal News*, a legal journal that reports on state and federal criminal cases. In particular, *Criminal Legal News* focuses on legal developments that affect the nature and duration of confinement, as well as civil rights litigation against police, prosecutors, and court systems.

10. To publish *Prison Legal News* and *Criminal Legal News*, and to promote its efforts related to transparency and accountability in the prison system, HRDC gathers information from state and federal governmental entities through FOIA and other public records requests.

11. On December 4, 2018, HRDC submitted a FOIA request to USMS via email, seeking records of all litigation against USMS and/or its employees or agents where the agency and/or its insurers paid \$1,000 or more to resolve claims, including settlements, damages, attorney fee awards, and sanctions, irrespective of the identity of the plaintiff or claimant ("the Verdicts and Settlements Request").

12. The Verdicts and Settlements Request specifically sought two categories of records:

(1) Records, regardless of physical form or characteristics, sufficient to show for all claims or lawsuits brought against USMS and/or any of its agents or employees in which payments totaling \$1,000 or more were disbursed from January 1, 2010 to the present: the name of all parties involved; the case or claim number; the jurisdiction in which the case or claim was brought (e.g., U.S. District Court for the District of Columbia, D.C. Superior Court, etc.); the date of resolution; and the amount of money involved in the resolution and to whom it was paid; and,

(2) For each case or claim detailed above: the complaint or claim form and any amended versions; and the verdict form, final judgment, settlement agreement, consent decree, or other paper that resolved the case.

13. In the Verdicts and Settlements Request, HRDC sought a waiver of any applicable fees as a “representative of the news media” on the grounds that disclosure of the requested records would be “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government[.]” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. §§ 16.10(c)(1)(i), 16.10(d)(1), 16.10(k)(1).

14. The documents requested in the Verdicts and Settlements Request are essential to HRDC’s work to advocate on behalf of the rights and interests of incarcerated individuals through the publication of *Prison Legal News*, *Criminal Legal News*, and other written works.

15. Pursuant to FOIA, within 20 business days of receipt of Plaintiff’s Verdicts and Settlements Request — that is, no later than January 3, 2019¹ — USMS was required to “determine . . . whether to comply with such request” and to “immediately notify” HRDC of

¹ A partial U.S. government shutdown that affected portions of DOJ and USMS took place from December 22, 2018 to January 25, 2019. Even excluding the days on which the federal government was shut down, USMS was required to respond to HRDC’s Verdicts and Settlements Request by February 5, 2019.

“such determination and the reasons therefor,” and, in the case of an adverse determination, HRDC’s appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

16. On February 28, 2019, the USMS FOIA Office called HRDC to discuss narrowing the Verdicts and Settlements Request. HRDC offered that it would be willing to limit the Verdicts and Settlements Request by dollar amount or type of claim, but the USMS FOIA Office said it would not be able to sort through its records using those criteria.

17. Since then, HRDC has called Ms. Leila Wassom of the USMS FOIA Office on multiple occasions to inquire about the status of the Verdicts and Settlements Request. During those discussions, Ms. Wassom has not articulated the scope of the documents that USMS intends to produce or withhold, or a timeline for responding to HRDC’s Verdicts and Settlements Request.

18. To date, USMS has not produced any documents in response to HRDC’s Verdicts and Settlements Request.

19. Thus, USMS has not made a determination on the Verdicts and Settlements Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

COUNT I - FAILURE TO COMPLY WITH FOIA

20. HRDC incorporates each of the foregoing paragraphs of this Complaint.

21. Pursuant to FOIA, 5 U.S.C. § 552(a), HRDC has a statutory right to access requested agency records.

22. Defendants have failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

23. Defendants have failed to conduct a reasonable search for records responsive to the Verdicts and Settlements Request.

24. Defendants have failed to grant HRDC's request for a fee waiver, as required by 5 U.S.C. § 552(a)(4)(A)(iii).

25. Defendants have failed to properly respond to HRDC's record request, as required by 5 U.S.C. § 552(a)(6)(A)(i).

PRAYER FOR RELIEF

WHEREFORE, HRDC respectfully requests that this Court enter a judgment for Plaintiff and award the following relief:

- a. Order Defendants, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiff's request;
- b. Order Defendants, by a date certain, to demonstrate that it has conducted an adequate search;
- c. Order Defendants, by a date certain, to produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;
- d. Enjoin Defendants from withholding the requested records;
- e. Award Plaintiff its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- f. Grant Plaintiff such other and further relief as the Court may deem just and proper.

May 28, 2019

Respectfully submitted,

/s/ Victor Ban

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